

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

CHRISTOPHER YOUNGER  
Petitioner-Defendant

v.

UNITED STATES OF AMERICA  
Respondent

On Petition for Writ of Certiorari from the  
United States Court of Appeals for the Fifth Circuit.  
Fifth Circuit Case No. 19-60243

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**PETITION FOR WRIT OF CERTIORARI**

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**Omodare B. Jupiter** (MB #102054)  
Federal Public Defender  
N. and S. Districts of Mississippi  
200 South Lamar Street, Suite 200-N  
Jackson, Mississippi 39201  
Telephone: 601/948-4284  
Facsimile: 601/948-5510

**Abby Webber Brumley** (MS Bar #101929)  
Assistant Federal Public Defender

Attorney for Defendant-Petitioner

## **QUESTION PRESENTED FOR REVIEW**

Whether the district court ordered an unreasonable 120-month prison sentence under the facts of this case, and considering the recommended Sentencing Guidelines range of 33 to 41 months in prison.

## **PARTIES TO THE PROCEEDING**

All parties to this proceeding are named in the caption of the case.

## TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW .....	ii
PARTIES TO THE PROCEEDING .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES .....	vi
I. OPINIONS BELOW .....	1
II. JURISDICTIONAL STATEMENT .....	3
III. STATUTE INVOLVED .....	4
IV. STATEMENT OF THE CASE .....	5
A. Basis for federal jurisdiction in the court of first instance .....	5
B. Statement of material facts .....	5
1. Mr. Younger's background .....	5
2. Facts about the admitted crime .....	6
3. Facts about the sentencing hearing .....	7
V. ARGUMENT .....	10
A. Review on certiorari should be granted in this case .....	10
B. The district court ordered an unreasonable 120-month prison sentence under the facts of this case, and considering the recommended Sentencing Guidelines range of 33 to 41 months in prison .....	10

1. Legal tests to measure the substantive reasonableness of a sentence.....	10
2. The nature and circumstances of the offense under § 3553(a)(1) .....	12
3. The history and characteristics of the defendant under § 3553(a)(1).....	13
4. Just punishment for the offense and adequate deterrence to criminal conduct under § 3553(a)(2)(A) and (B).....	14
5. Protection of the public from further crimes of the defendant under § 3553(a)(2)(C) .....	14
6. The need for educational or vocational training, medical care, or other correctional treatment under § 3553(a)(2)(D) .....	15
7. The kinds of sentences available under § 3553(a)(3) .....	15
8. The Guidelines sentencing range under § 3553(a)(4)(A) .....	15
9. Conclusion: § 3553(a) analysis.....	15
VI. CONCLUSION.....	17
CERTIFICATE OF SERVICE .....	18
(Appendices 1, 2 and 3)	

## TABLE OF AUTHORITIES

### Page(s)

#### Cases:

<i>Gall v. United States</i> , 552 U.S. 38 (2007) .....	15, 16
<i>United States v. Churchwell</i> , 807 F.3d 107 (5th Cir. 2015) .....	11
<i>United States v. Gerezano-Rosales</i> , 692 F.3d 393 (5th Cir. 2012) .....	11

#### Statutes:

18 U.S.C. § 922 .....	1, 5
18 U.S.C. § 924 .....	1, 5, 14
18 U.S.C. § 3231 .....	5
18 U.S.C. § 3553 .....	4, 8, 11, 12, 13, 13, 14, 15, 16
28 U.S.C. § 1254 .....	3

#### Rules:

Rule 10, Supreme Court Rules .....	10
Rule 13.1, Supreme Court Rules .....	3
Rule 29.5, Supreme Court Rules .....	18

#### Provisions of the United States Sentencing Guidelines:

Sentencing Guidelines, Ch. 1, Pt. A.1.1. ....	14
Sentencing Guidelines, Ch. 1, Pt. A.1.3. ....	14

## **I. OPINIONS BELOW**

On August 21, 2018, the Grand Jury for the Southern District of Mississippi returned an Indictment charging Mr. Younger with felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court case number is 3:18cr162-HTW-FKB. Mr. Younger accepted responsibility for his actions by pleading guilty to the charge on January 2, 2019. The sentencing hearing followed on April 4, 2019.

The sentencing range under the United States Sentencing Guidelines ((hereinafter “Sentencing Guidelines” or “Guidelines”) was only 33 to 41 months in prison. Nevertheless, the district court ordered Mr. Younger to serve 10 years in prison, which was the statutory maximum sentence. The court entered a Final Judgment on April 15, 2019. The district court’s Final Judgment is attached hereto as Appendix 1.

Mr. Younger filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on April 15, 2019. The Fifth Circuit case number is 19-60243. The Fifth Circuit affirmed the district court’s rulings via an Opinion filed on May 5, 2020. The Fifth Circuit filed a Judgment on the same day. The Fifth Circuit’s Opinion and Judgment are attached hereto as composite Appendix 2. The Fifth Circuit’s Opinion is not published, but it appears in the Federal

Appendix at 803 Fed. App'x 798. A copy of the Federal Appendix rendition of the opinion is attached hereto as Appendix 3.



## **II. JURISDICTIONAL STATEMENT**

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on May 5, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Judgment as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's Covid 19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

### **III. STATUTE INVOLVED**

This case involves applying the sentencing provisions of 18 U.S.C. § 3553(a). This code section has many factors that guide courts at sentencing, which are considered in detail below. But the underlying concept of this code section is that sentencing courts “shall impose a sentence sufficient, but not greater than necessary” to meet the goals of the justice system. *Id.*

## **IV. STATEMENT OF THE CASE**

### **A. Basis for federal jurisdiction in the court of first instance.**

This case arises out of a criminal conviction entered against Mr. Younger for felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Younger arose from the laws of the United States of America.

### **B. Statement of material facts.**

#### **1. Mr. Younger's background.**

Mr. Younger grew up in an alcoholic environment. His mother drank so much that she was unable to get Mr. Younger to his first grade classes enough to pass that grade on his first attempt. His mom died of alcohol-related health conditions when Mr. Younger was 13 years old. Mr. Younger found his mother dead, lying in a pool of blood. This event traumatized him.

Mr. Younger's dad also suffered from alcohol and drug abuse. He has been clean and sober since the year Mr. Younger's mom died. Before that, he spent very little time with Mr. Younger.

Mr. Younger started getting into trouble about the time that his mother died. He also started using alcohol and drugs around that time. Because of difficulties

dealing with the problems in his life, Mr. Younger was sent to Oakley Training School in 1996. He got his GED through a program offered at Oakley.

Mr. Younger's work history includes working for a plumber and doing construction work. Also, he worked maintaining rental property. He likes to learn, and hopes to educate himself in the heating and air conditioning repair trade.

Mr. Younger is a good-hearted man that cares for other people. This is apparent by his actions. He took in a mother that lost her job, as well as her two kids. As Mr. Younger explained, he did this because the lady "was just down on her luck and needed somebody to help her out." Mr. Younger took the lady's children to school and picked them up.

Mr. Younger has a history of substance abuse. As his father testified at the sentencing hearing, most of Mr. Younger's past crimes were committed when he was actively using drugs and alcohol. He admits that he needs help with the drug addiction problem. In fact, before he was incarcerated on the subject charge, Mr. Younger applied to and was accepted at a treatment center named Phoenix Recovery Center. Also, he has completed courses in Bible study to try to better himself.

## **2. Facts about the admitted crime.**

Officers discovered the gun at issue in this case when they went to Mr. Younger's residence to arrest him on a warrant out of Arkansas. The Arkansas

arrest warrant pertained to a state court parole violation. He was arrested without incident, and he admitted that he purchased the gun. The gun was not loaded when officers seized it.

While a later investigation indicates that the gun may have been stolen, the person that sold it to Mr. Younger stated it was not stolen. Nevertheless, Mr. Younger suffered the consequences because two points were added to his Guidelines offense level because the gun was purportedly stolen.

Mr. Younger did nothing to obstruct justice during the arrest or during this entire prosecution, and the crime had no victims. He accepted responsibility for his actions at the plea hearing. He also accepted responsibility for his actions during an interview with the probation officer.

### **3. Facts about the sentencing hearing.**

Mr. Younger testified at the sentencing hearing. The district court subjected him to prolonged questioning about his tattoos and whether they are gang related.<sup>1</sup> Mr. Younger provided credible answers that the tattoos are not gang related.

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<sup>1</sup> In an unrelated case, another district judge in Southern District of Mississippi characterized similar questioning by the judge in this case as “cross examination.” See *United States v. Donald Ray Quinn*, Criminal No. 3:92cr121-DPJ-FKB, in the United States District Court for the Southern District of Mississippi. The other judge stated:

I do want to say for the record – I meant to say it early on – that I obviously read the order of recusal and, Ms. Stewart, your motion to try to get some context of what was going on.

I started to read the first transcript. And as I sort of got into what sounded like a cross-examination, I decided to stop reading it. And this may be overly cautious, but I

Mr. Younger’s dad also testified at the sentencing hearing. During that testimony, the court made reference to his attempts to “fabricate” answers. The court also admitted that it put the witness “on the defensive with all these questions.”<sup>2</sup>

The recommended sentence range under the Guidelines was 33 to 41 months in prison. The statutory maximum sentence that the court could order was ten years in prison.

Without going through any of the individual factors under 18 U.S.C. § 3553(a), the court ordered the statutory maximum sentence of ten years in prison, which was well above the recommended Guidelines sentencing range of 33 to 41 months in prison. It also ordered a three-year period of supervised release following the prison term, and a fine of \$1,500.

Finally, the court ordered the subject sentence to run consecutive to any sentence that Mr. Younger is serving because of the Arkansas state court conviction. He is eligible for parole on the Arkansas conviction in 2021, but he is

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didn’t want – *I didn’t want there to be any suggestion that any bias for recusal by the prior judge might taint my review of the case so I elected not to read that*, I guess it was a 95-page transcript. I read your motion, but I tried to separate my thought process from that of the original judge. I did want to put that on the record.

Hearing Transcript, pp. 21-22 (emphasis added). The hearing transcript is available for this Court’s review under docket entry number 31 in *Quinn*, Case No. 3:92cr121, in the Southern District of Mississippi.

<sup>2</sup> See *supra*, footnote 1.

subject to up to 18 years in prison in Arkansas on the yet to be adjudicated parole violation that officers were at Mr. Younger's residence to arrest him on. This means that he could be facing a total sentence of 28 years in prison (ten years on the subject conviction and 18 years on the Arkansas case, to run consecutively).

The defense objected to the sentence as unreasonable. The court implicitly overruled the objection. Aggrieved by the district court's sentence, Mr. Younger appealed the case to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit affirmed the district court's rulings, and this Petition for Writ of Certiorari followed.

## **V. ARGUMENT**

### **A. Review on certiorari should be granted in this case.**

The issue in this case is whether the significantly above-Guidelines 120-month prison sentence ordered by the district court is unreasonable. As stated above, the sentencing range under the Sentencing Guidelines was 33 to 41 months in prison. Considering this Guidelines range and considering the facts of Mr. Younger's case, the 120-month sentence is unreasonably high.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” The Court should exercise its discretion and grant certiorari because this case involves a grossly unwarranted deviation from the Sentencing Guidelines. While the Guidelines are not mandatory, they provide researched and well-reasoned grounds for ordering sentences within a particular range for similarly situated defendants. Granting certiorari in this case will allow the Court an opportunity to provide guidance about necessary justification for deviating from the Guidelines.

### **B. The district court ordered an unreasonable 120-month prison sentence under the facts of this case, and considering the recommended Sentencing Guidelines range of 33 to 41 months in prison.**

#### **1. Legal tests to measure the substantive reasonableness of a sentence.**

An above-Guidelines sentence is substantively unreasonable if it “(1) does not account for a factor that should have received significant weight, (2) gives



significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Churchwell*, 807 F.3d 107, 123 (5th Cir. 2015) (emphasis added; citation omitted).

Mr. Younger’s sentence is substantively unreasonable under the third factor – balancing the sentencing factors under 18 U.S.C. § 3553(a) indicates that a within-Guidelines sentence should have been ordered, or at least that a sentence far below 120 months in prison was sufficient. In fact, the district court failed to specifically conduct a § 3553(a) analysis at all.

Under Fifth Circuit law, a court considers “the totality of the circumstances” when it analyzes substantive reasonableness. *United States v. Gerezano-Rosales*, 692 F.3d 393, 398 (5th Cir. 2012) (citations omitted). The starting point for the totality of the circumstances analysis is 18 U.S.C. § 3553, titled “Imposition of a sentence.” Under § 3553(a), “[t]he court shall impose a sentence sufficient, but not greater than necessary” to meet the ends of justice. Section 3553(a) requires judges to consider a number of factors when they craft appropriate punishments for offenses. The primary factors are:

- “the nature and circumstances of the offense” (§ 3553(a)(1));
- “the history and characteristics of the defendant” (*id.*);
- “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense” (§ 3553(a)(2)(A));

- “to afford adequate deterrence to criminal conduct” (§ 3553(a)(2)(B));
- “to protect the public from further crimes of the defendant” (§ 3553(a)(2)(C));
- “to provide a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner” (§ 3553(a)(2)(D));
- “the kinds of sentences available” (§ 3553(a)(3));
- “the sentencing range established for ... the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines” (§ 3553(a)(4)(A)); and
- “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” (§ 3553(a)(6)).

Each of these factors is considered below.

## **2. The nature and circumstances of the offense under § 3553(a)(1).**

Mr. Younger’s admitted crime does not present facts that are unusual or egregious. He simply possessed guns, which he was prohibited from doing as a convicted felon. He did nothing aggressive toward the arresting officers, he did nothing to obstruct justice, and the crime was victimless. The gun was unloaded

when the officers took possession of it. These facts support a ruling that the district court ordered an unreasonably high sentence.

**3. The history and characteristics of the defendant under § 3553(a)(1).**

The primary reasons stated by the district court for ordering a well above-Guidelines sentence was his criminal history. But he does not have any crimes against a person. Most of the crimes involve stealing property.

As Mr. Younger's father pointed out at the sentencing hearing, these property crimes were committed when Mr. Younger was actively involved in drug and alcohol addiction. Mr. Younger acknowledged his addiction, and actively sought out help to solve the problem. Before his arrest on the subject charge, Mr. Younger applied to and was accepted at Phoenix Recovery Center. He also took steps to strengthen his spiritual life thorough Bible study courses.

Mr. Younger's history proves his caring nature toward other people. He allowed a mother that lost her job, as well as her two children, to move in with him. He did this because the lady "was just down on her luck and needed somebody to help her out." Mr. Younger took the lady's children to school and picked them up.

These facts support a conclusion that the 120-month sentence is unreasonably long.

**4. Just punishment for the offense and adequate deterrence to criminal conduct under § 3553(a)(2)(A) and (B).**

The subject statute carries no required minimum sentence. 18 U.S.C. § 924(a)(2). The statutory maximum sentence is ten years, or 120 months. *Id.*

In addition to the statute, we consider the Sentencing Guidelines, which are adopted by the Sentencing Commission. The stated purpose of the Sentencing Commission “is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.” Sentencing Guidelines, Ch. 1, Pt. A.1.1. (emphasis added). Also, the Guidelines are meant to “combat crime through an effective, fair sentencing system.” *Id.* at Ch. 1, Pt. A.1.3. (emphasis added). Mr. Younger’s Guidelines sentencing range of 33 to 41 months in prison meets the ends of justice and provides a fair sentence.

**5. Protection of the public from further crimes of the defendant under § 3553(a)(2)(C).**

Mr. Younger did not resist police during the subject arrest and this felon in possession crime had no victims. He simply possessed an unloaded gun. He has no prior convictions for crimes against a person. Under these facts, a sentence within the Guidelines range would serve the purposes of § 3553(a)(2)(C).

**6. The need for educational or vocational training, medical care, or other correctional treatment under § 3553(a)(2)(D).**

Mr. Younger can benefit from the Residential Drug Abuse Treatment program offered by the Bureau of Prisons. The program can be completed within the Guidelines sentencing range of 33 to 41 months in prison.

**7. The kinds of sentences available under § 3553(a)(3).**

This factor does not come into play in the subject analysis.

**8. The Guidelines sentencing range under § 3553(a)(4)(A).**

The Guidelines sentencing range was 33 to 41 months in prison. As this Court is aware, the Sentencing Commission goes to great lengths to study and provide guidance regarding what constitutes fair sentences for all federal crimes. A sentence within Sentencing Commission's recommended range would meet the § 3553(a) considerations in this case.

**9. Conclusion: § 3553(a) analysis.**

It is interesting to recognize that the only § 3553(a) factor implicitly considered by the district court for ordering a well above-Guidelines sentence is Mr. Younger's criminal history. The statutory maximum 120-month sentence ordered by the court is about three times higher than the high end of the recommended Guidelines range of 33 to 41 months in prison. This extreme deviation from the Guidelines range required an analysis of § 3553(a), a task that the district court failed to perform. *See Gall v. United States*, 552 U.S. 38, 49-50,

128 S. Ct. 586, 596 (2007) (holding, “after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.”).

Most if not all of the individual § 3553(a) factors support a finding that Mr. Younger should have been sentenced within the 33 to 41-month Guidelines range. Mr. Younger therefore asks this Court to grant his Petition for Writ of Certiorari and correct the district court’s sentencing error.

## **VI. CONCLUSION**

Based on the arguments presented above, Mr. Younger asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted September 30, 2020 by:

A handwritten signature in black ink, appearing to read 'Abby Webber Brumley', is written over a horizontal line.

**Abby Webber Brumley**  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
Southern District of Mississippi  
200 South Lamar Street, Suite 200-N  
Jackson, Mississippi 39201  
Telephone: 601/948-4284  
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

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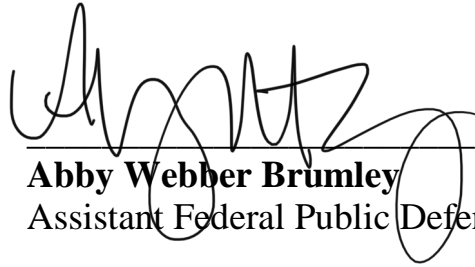
**CERTIFICATE OF SERVICE**

I, Abby W. Brumley, appointed under the Criminal Justice Act, certify that today, September 30, 2020, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 771669101489, addressed to:

The Honorable Noel Francisco  
Solicitor General of the United States  
Room 5614, Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001



I further certify that all parties required to be served with this Petition and the Motion have been served.



**Abby Webber Brumley**  
Assistant Federal Public Defender